

EXECUTED IN 6 COUNTERPARTS

OF WHICH THIS IS NO. 5

8092

RECORDATION NO. .... Filed & Recorded

OCT 22 1975 - 11 15 AM

INTERSTATE COMMERCE COMMISSION

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AGREEMENT

Dated as of October 1, 1975

between

ACF INDUSTRIES, INCORPORATED

and

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

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Covering

1,372 100-Ton Open Top Hopper Cars

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THIS AGREEMENT, dated as of October 1, 1975, by and between  
ACF INDUSTRIES, INCORPORATED, a New Jersey corporation (Manufacturer),  
and THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation (C&O);

W I T N E S S E T H :

The Manufacturer and C&O heretofore entered into a letter Agreement dated February 25, 1975 (a copy of which letter Agreement is made a part hereof by reference), and such addenda thereto and modifications thereof as may have been or may be agreed upon in writing between the Manufacturer and C&O, whereunder the Manufacturer agreed to construct at its St. Louis, Missouri plant and to deliver to C&O at Cincinnati, Ohio, or at such other point or points as directed by C&O, and C&O agreed to accept and pay for 1,372 100-ton open top hopper cars to bear C&O road numbers 183000 - 184371, inclusive (Cars).

As contemplated by said letter Agreement, C&O intends to finance the purchase of the Cars from the Manufacturer pursuant to an Equipment Trust Agreement to be dated as of December 1, 1975, but deliveries of the Cars are scheduled to begin on or about November 1, 1975, and C&O will not have established said financing arrangement by that time nor be in position to take such deliveries thereunder. C&O represents that such financing arrangement will be established, however, on or before January 1, 1976. C&O, in order that it may use the Cars pending establishment of such financing arrangement, has arranged with the Manufacturer to give it temporary custody and possession of the Cars upon their completion, solely as a bailee of the Cars, and the Manufacturer is willing to do so upon the terms and conditions hereinafter stated.

In consideration of the premises, the Manufacturer hereby delivers to C&O and C&O hereby accepts from the Manufacturer the Cars as of the date each of them is delivered to C&O at Cincinnati, Ohio, or such other point or points as may be directed by C&O, for the period ending on the earlier of January 1, 1976, or the date of establishment of said financing arrangement. On such termination date, this Agreement shall automatically be cancelled and superseded without further action by or notice to any party concerned.

Upon delivery of each Car to the delivery point, C&O's representative will execute a certificate of acceptance acknowledging the receipt of delivery of such Car under this Agreement. Title to the Cars shall remain in the Manufacturer and C&O's right and interest therein is and shall be solely that of possession, custody and use as bailee under this Agreement. Transfer of title shall be effected only at the time of delivery of bills of sale. C&O, without expense to the Manufacturer, will promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation under Section 20c of the Interstate Commerce Act. In addition, C&O shall do such other acts as may be required by law, or reasonably requested by the Manufacturer, for the protection of the Manufacturer's title to and interest in the Cars.

C&O agrees that it will permit no liens of any kind to attach to the Cars; and that it will

- (a) indemnify and save harmless the Manufacturer from any and all claims, expenses or liabilities of whatsoever kind, and
- (b) pay any and all taxes, fines, charges and penalties that may accrue or be assessed or imposed upon the Cars or the Manufacturer,

because of the Manufacturer's ownership or because of the use, operation, management or handling of the Cars by C&O during the term of this Agreement. C&O's obligations contained in this paragraph shall survive the termination of this Agreement.

C&O will, at its own expense, keep and maintain the Cars in good order and running condition and will at its option repair or replace or promptly pay to Manufacturer the purchase price in cash of those Cars which may be damaged or destroyed by any cause during the term of this Agreement.

Prior to the delivery of each Car to C&O under this Agreement it will be numbered with a road number as hereinbefore indicated, and there shall be plainly, distinctly, permanently and conspicuously stencilled upon each side of each Car, in contemplation of said financing arrangement, the following legend in letters not less than one inch in height:

"CHESAPEAKE AND OHIO RAILWAY SECOND EQUIPMENT TRUST OF 1975,  
MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, TRUSTEE, OWNER, LESSOR"

C&O hereby agrees to indemnify the Manufacturer against any liability, loss or expense incurred by it as a result of the placing of the aforementioned markings on the Cars.

In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced or destroyed on any Cars, C&O shall immediately cause the same to be restored or replaced.

All or any of the rights, benefits or advantages of the Manufacturer, including the right to receive the purchase price of the Cars as provided in the letter Agreement, may be assigned by the Manufacturer and reassigned by any assignee at any time or from time to time, provided,

however, that no such assignment shall subject any such assignee to any of the Manufacturer's warranties, indemnities or any other obligations contained in this Agreement or in the letter Agreement relating to the Cars. In the event the Manufacturer assigns its rights to receive the payments herein and/or under the letter Agreement, and C&O receives written notice thereof from the Manufacturer, together with a counterpart of such assignment stating the identity and the post office address of the assignee, all payments thereafter to be made by C&O under this Agreement, shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to C&O.

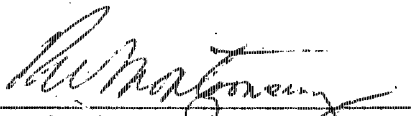
In the event of any assignment by the Manufacturer of its rights to receive any payments under this Agreement or under the letter Agreement, the rights of such assignee to such payments as may be assigned together with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer in respect to the Cars, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to C&O by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by C&O, its successors and assigns only against the Manufacturer and its successors and assigns (other than assignees as such of rights, benefits or advantages assigned pursuant to this Agreement).

C&O agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to C&O of

the Cars, as contemplated by this Agreement, shall not relieve C&O of its obligations to accept, take and pay for the Cars in accordance with the terms of the letter Agreement, or impair any of the Manufacturer's rights under the letter Agreement.

Attest:

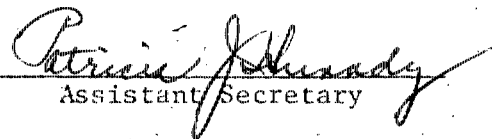
ACF INDUSTRIES, INCORPORATED

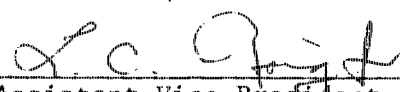
  
Assistant Secretary

By   
Vice President

Attest:

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

  
Assistant Secretary

By   
Assistant Vice-President  
and Treasurer

APPROVED AS TO FORM



GENERAL ATTORNEY

10/16/75

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF NEW YORK)

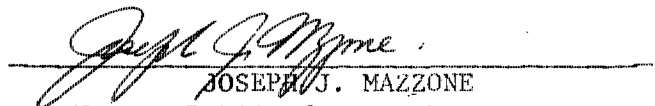
On this 20<sup>th</sup> day of October, 1975, before me personally appeared **W. W. WILSON**, to me personally known, who, being by me duly sworn, says that he is a Vice President of ACF INDUSTRIES, INCORPORATED, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



EDWIN F. MEYER  
NOTARY PUBLIC, State of New York  
No. 30-7917803  
Qualified in Nassau County  
Certificate filed in New York County  
Commission Expires March 30, 1976

STATE OF OHIO )  
 ) SS:  
COUNTY OF CUYAHOGA)

On this 16<sup>th</sup> day of October, 1975, before me personally appeared L. C. ROIG, JR., to me personally known, who, being by me duly sworn, says that he is Assistant Vice-President and Treasurer of THE CHESAPEAKE AND OHIO RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



JOSEPH J. MAZZONE  
Notary Public for Cuyahoga County  
My Commission Expires September 22, 1977